

CHAPTER 7

APPEALS

IN GENERAL

This chapter provides information about state law provisions concerning appeals authorities and time limitations for review for first-level appeals, second-level appeals, and judicial review.

The Social Security Act requires states to offer “opportunity for a fair hearing before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied.” Hence, all states’ laws provide for a right to appeal. Further, all but a few states’ laws provide for a second-level appeal. In all states, individuals who are not satisfied with the outcome of the administrative appeal(s) may appeal their cases in the state court system, federal courts, and, as a last resort, the U.S. Supreme Court. In all states, employers who have an interest are granted the right to appeal decisions on claims as well.

As a result of *California Department of Human Resources Development v. Java*, 402 U.S. 121 (1971), once a UI claimant has been found eligible for benefits, such claimant will continue to receive benefits until a decision is issued reversing the determination allowing benefits. Thus, an employer’s appeal will not affect the continuance of payment of benefits until a subsequent decision is issued denying benefits. The majority of state laws specifically provide for the payment of benefits pending an appeal of a determination or decision allowing benefits, while other states have either interpreted their laws or have been required by court order to follow this procedure. In all states, this procedure applies to any determination or decision issued allowing benefits.

Most states specify that findings of fact, conclusions of law, or final orders made by a UI hearing officer or board of review will not be binding in any separate or subsequent proceeding brought in any judicial, administrative, or arbitration proceeding in that state or of the U.S. government. The states that do not specify this are listed in table 7-1. Some states’ laws provide that information obtained in connection with the UI law may not be used in certain civil lawsuits as well.

Alabama	Delaware	Hawaii	Kentucky	Maryland
Mississippi	Puerto Rico	Rhode Island	South Carolina	Virginia
Virgin Islands	West Virginia			

APPEALS

FIRST- AND SECOND-LEVEL APPEALS

FIRST-LEVEL APPEALS— An individual who disagrees with a determination denying benefits has the right to file an appeal of that determination. The determination becomes final unless a timely appeal is filed. In some states, a special examiner is designated to re-determine the original claim before an appeal. Also, an employer who disagrees with a determination paying benefits may file an appeal of that determination. Typically, all states’ laws provide that appeals at the initial stage will be conducted by one person called a referee, examiner, or administrative law judge.

In all but a few states, the decision of the first-level appeals body is final in the absence of further appeal. In other states, the official may reconsider his/her decision within the appeal period.

SECOND-LEVEL APPEALS— Any interested party who disagrees with a first-level appeals decision must file a timely appeal of that decision to the second-level appeals body or the decision becomes final. Some states provide that a contested determination involving a labor dispute shall be appealed directly to the second-level appeal body. A few states have no second-level appeals body. In those states, the next appeal level is to the courts. About half of the states with second-level appeals have a board of review, board of appeals, or appeals board to hear cases appealed from the decision of the first-level appeals body. Most of these boards consist of three members. The members of the appeals boards generally represent labor, employers, and the public. Some common requirements related to the composition of an appeals body are: location of residence; political affiliation; whether the individual is an attorney or not; or whether the individual is designated as an employer or employee representative.

In the rest of the states with second-level appeals, appeals are handled by an existing commission or agency head.

TIME LIMITS FOR FILING APPEALS AND APPELLATE ENTITIES—The number of days for filing a first- or second-level appeal varies among the states, and ranges from 7-30 days after mailing, delivering, or electronically transmitting the notice of determination or decision. Many states extend the time for filing appeals for good cause. Some states specify that a “day” is defined as a calendar day. Some states that do not define “day” extend the due date for filing appeals when the last day for filing or the date of mailing falls on a Saturday, Sunday, holiday, or any other day the state agency is closed. State-specific information for filing first- or second-level appeals can be found in the following table.

TABLE 7-2: TIME LIMITATIONS FOR APPEALS AND APPELLATE ENTITIES			
State	First-Level Appeals	Second-Level Appeals	
	Number Of Days For Filing	Number Of Days For Filing	Appellate Entity
AL	15 [#] after mailing; 7 [#] after delivery	15 [#] after mailing date	Board of Appeals
AK	30 after mailing or personal delivery; an additional 3 days if mailed	30 after mailing or personal delivery; an additional 3 days if mailed	Commissioner
AZ	15 [#] after mailing; 7 [#] after delivery	30 [#] after mailing or electronic transmission	Appeals Board
AR	20 [#] after mailing or delivery	20 [#] after mailing or delivery	Board of Review
CA	30 [#] after mailing date on notice or personal service	30 [#] after mailing date on notice or personal service	Appeals Board
CO	20 [#] after mailing or personal delivery	20 [#] after mailing or personal delivery	Industrial Claim Appeals Office (Panel)
CT	21 [#] after notice mailed or provided	21 [#] after mailing	Board of Review
DE	10 [#] after mailing	10 after decision is final	UI Appeal Board

APPEALS

TABLE 7-2: TIME LIMITATIONS FOR APPEALS AND APPELLATE ENTITIES			
State	First-Level Appeals	Second-Level Appeals	
	Number Of Days For Filing	Number Of Days For Filing	Appellate Entity
DC	15 [#] after mailing or actual delivery	NO SECOND-LEVEL APPEAL	
FL	20 [#] after mailing or delivery	20 [#] after mailing or delivery	Unemployment Appeals Commission
GA	15 after mailing or delivery	15 after mailing or delivery	Board of Review
HI	10 after mailing or delivery	NO SECOND-LEVEL APPEAL	
ID	14 after mailing or delivery	14 after actual mailing or delivery	Industrial Commission
IL	30 [#] after mailing or delivery	30 [#] after mailing or delivery	Board of Review
IN	10 [#] after mailing or delivery; an additional 3 [#] if mailed	15 [#] after mailing or delivery; an additional 3 [#] if mailed	Review Board
IA	10 [#] after date of administrative law judge's decision	15 [#] after date of administrative law judge's decision	Employment Appeal Board
KS	16 [#] after mailing or delivery	16 [#] after mailing or delivery	Board of Review
KY	15 after mailing	15 after mailing	UI Commission
LA	15 after mailing date of document	15 after mailing date on Administrative Law Judge's decision	Board of Review
ME	15 [#] after mailing	15 [#] after mailing	UI Commission
MD	15 [#] after mailing or delivery	15 [#] after mailing or delivery	Board of Appeals
MA	30 after mailing or delivery	30 after mailing	Board of Review
MI	30 after mailing, by facsimile, or other electronic method	30 after mailing, by facsimile, or other electronic method	Board of Review
MN	20 [#] after mailing, facsimile, or electronic transmission	NO SECOND-LEVEL APPEAL	
MS	14 after notification or mailing	14 after notification or mailing	Board of Review
MO	30 after date of notification or mailing	30 after date of notification or mailing	Industrial Commission
MT	10 after mailing	10 after mailing	Unemployment Insurance Appeals Board
NE	20 [#] after delivery or mailing	NO SECOND-LEVEL APPEAL	
NV	11 after mailing or personal service of determination or redetermination	11 after mailing or delivery	Board of Review
NH	14 [#] after mailing	14 [#] after mailing	Appellate Board
NJ	7 [#] after delivery, 10 [#] after mailing	20 [#] after notification or mailing	Board of Review
NM	15 [#] from the date on the notice	15 [#] from the date on the notice	Board of Review
NY	20 after mailing or personal delivery	20 after mailing or personal delivery	Appeal Board
NC	15 after notification or mailing, whichever is earlier	10* after notification or mailing, whichever is earlier	Board of Review
ND	12 after mailing or service	12 after mailing or service	Bureau
OH	21 [#] after mailing of determination or redetermination	21 [#] after mailing	Unemployment Compensation Review Commission
OK	10 [#] from mail date	10 [#] from mail date	Board of Review
OR	20 after mailing or delivery	20 after mailing or delivery	Employment Appeals Board

APPEALS

TABLE 7-2: TIME LIMITATIONS FOR APPEALS AND APPELLATE ENTITIES			
State	First-Level Appeals		Second-Level Appeals
	Number Of Days For Filing	Number Of Days For Filing	Appellate Entity
PA	15 [#] after mailing	15 after mailing	Unemployment Compensation Board of Review
PR	15 after mailing or delivery	15 after mailing or delivery	Secretary of Labor
RI	15 [#] after mailing	15 after mailing	Board of Review
SC	10 after mailing	10 [#] after mailing	Appellate Panel
SD	15 after mailing	15 after mailing or notification	Secretary of Labor and Regulation
TN	15 [#] after mailing or delivery, whichever occurs first	15 [#] after mailing or delivery, whichever occurs first	Commissioner's designees
TX	14 [#] after mailing	14 [#] after mailing	Commission
UT	15 [#] from date of decision unless other specified on decision	30 [#] from date of the decision	Appeals Board
VT	30 from date of the determination or decision	30 from date of the determination or decision	Employment Security Board
VI	10 after mailing or delivery	NO SECOND-LEVEL APPEAL	
VA	30 [#] after of mailing date of the determination or delivery	30 after mailing or delivery	Office of Commission Appeals
WA	30 after mailing or notification, whichever is earlier	30 after mailing or notification, whichever is earlier	Commissioner's Review Office
WV	8 [#] after mailing or delivery	8 [#] after mailing or delivery	Board of Review
WI	14 after mailing or being given to such party, whichever occurs first	21 from the date of the decision	Labor and Industry Review Commission
WY	28 [#] after mailing	28 [#] after mailing	Employment Security Commission
# Indicates "calendar" days * Indicates "working" days If unmarked, type of "days" is not specified			

JUDICIAL REVIEW

The decision of the second-level appeals body or the first-level appeals body, in states without a second-level appeals body, becomes final unless an appeal is filed for judicial review. All states provide for appeals to the courts for judicial review. In general, the time limit for filing ranges from 10 to 30 days as shown in table 7-3. States that designate a specific period of time to exhaust actions before the second administrative appeals body decision becomes final provide an additional period of time in which to seek judicial review, commencing with the date the decision is final.

TABLE 7-3: JUDICIAL REVIEW			
State	Number of Days for Filing		Court of Initial Jurisdiction
	After Notification ¹	Other	
AL	30 from the date the Board decision becomes final		Circuit Court in county in which claimant resides; or if claimant not residing in state, claimant must file in the county in which claimant last worked or resided
AK		Within-30 days after date of entry of the decision	Superior Court

APPEALS

TABLE 7-3: JUDICIAL REVIEW			
State	Number of Days for Filing		Court of Initial Jurisdiction
	After Notification¹	Other	
AZ	30	30 days after date of mailing or electronic transmission of the decision	Court of Appeals
AR	30 [#]		Court of Appeals
CA		Within 6 months of date of decision, or date it is designated a precedent, whichever is later	Superior Court; by court rule, no statutory provision
CO	21 [#]		Court of Appeals
CT	30 [#]		Superior Court in Hartford or district where appellant resides
DE	10 + 10		Superior Court
DC		30 days after decision is final	D.C. Court of Appeals
FL		Within 30 [#] days of date of entry of decision (prescribed by appellate rules)	District Court of Appeals in appellate district in which claimant resides or the job separation arose, or in the appellate district where the order was issued
GA	15 + 15		Superior Court in county or city in which the claimant last worked
HI		30 days after service of decision	Circuit Court in county in which claimant resides, or in county or city in which claimant last worked
ID	42		Supreme Court
IL	35		Circuit Court in county in which claimant resides or county where business is located; non-resident may file suit in Circuit Court of Cook County
IN	15; or 30 [#] days from date of notice of intention to appeal filed within the 15-day period		Indiana Court of Appeals
IA	30 [#] after date of notice		District Court in county in which claimant resides; non-resident may file suit in District Court of Polk County or where claimant last worked
KS	16 [#]		District Court in county where claimant resides; non-resident may file suit in Shawnee County District Court or in county in which business is located
KY		20 days after date of decision	Circuit Court in county or city in which claimant last worked
LA	15 days of the mailing date		District Court where claimant resides; or if claimant not residing in state at time for filing petition, claimant may file in District Court in the parish in which claimant resides or in parish in which the Louisiana Workforce Commission is domiciled
ME	10		Superior Court in county in which plaintiff lives or does business
MD	30		Circuit Court of County of Baltimore, or one of the Circuit Courts in a county in Maryland
MA	30		District Court in county in which claimant resides, or in county or city in which claimant last worked, or in district of employers usual place of business
MI	30		Circuit Court in county in which claimant resides, or last worked, or county in which business is located

APPEALS

TABLE 7-3: JUDICIAL REVIEW			
State	Number of Days for Filing		Court of Initial Jurisdiction
	After Notification¹	Other	
MN	30 [#]		Court of Appeals
MS	10 + 10		Circuit Court of the county where party resides, the county in which the action arose, or in the county of employment
MO	10 + 20		Appellate Court; appeals on interstate claims will be in Court of Appeals for the Western District
MT	30		District Court in county in which claimant resides
NE	30		District Court in county in which claimant resides or last worked
NV	11		District Court in the county where employment was performed
NH	30		Supreme Court
NJ	45 of mailing date		Superior Court, Appellate Division
NM	30		District Court in county in which claimant resides
NY	20		Supreme Court, Appellate Division, Third Department
NC	30		Superior Court in county in which claimant resides or county in which business is located
ND	30		District Court
OH	30		Court of Common Pleas in county in which claimant resides or last worked, or in county in which business is located
OK		30 days from mailing date	District Court in county in which claimant resides; non-resident may file suit in District Court of Oklahoma County
OR		30 days after order is served	Court of Appeals
PA	15 + 30		Commonwealth Court
PR	30		Superior Court in county in which employer or employing unit has its place of business
RI	30		District Court - Sixth Division, State of Rhode Island
SC	30		Administrative Law Court
SD		30 days of the date of decision	Circuit Court
TN		30 days after decision of commissioner has become final	Chancery Court in county in which claimant resides; non-resident may file suit in Chancery Court of the county in which employer is located
TX	28 ²		County Court in county in which claimant resides; non-resident may file suit in Travis County Court or in county in which claimant last or principle place of business is located
UT		30 days after date of decision	Utah Court of Appeals
VT		30 days after date of decision	Supreme Court
VA	30		Circuit Court where claimant last worked
VI	30		District Court of the Virgin Islands
WA	30		Superior Court; appeals on intrastate claims filed in petitioner's choice of Thurston County or county of residence or business; appeals on interstate claims in Thurston County
WV	30		Circuit Court of Kanawha County

APPEALS

TABLE 7-3: JUDICIAL REVIEW			
State	Number of Days for Filing		Court of Initial Jurisdiction
	After Notification ¹	Other	
WI	30		Circuit court of the county where plaintiff resides, except if the plaintiff is a state agency, the proceedings must be in the state where the defendant resides; if the plaintiff is a non-resident of Wisconsin, the proceedings must be in the Circuit Court of Dane County; cases can be brought in any other county circuit court if the parties and the court agree
WY	30		District Court of Natrona County, or in county in which claimant resides, or in county in which business is located

Indicates "calendar" days

¹ Where two figures are shown, the first figure is the number of days after which the decision is final and is the time claimant has to exhaust actions before administrative appeals bodies; the second figure is additional time allowed to seek judicial review. Notification may include postal or electronic mailing, in-person delivery, or other methods of notice.

² Claimant may request a rehearing within 14 days of the date that the second-level appeals decision is mailed; starting on the 15th day, the individual may file for judicial review with the civil court.